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8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.

13 AMADOR HEREDIA-MENDOZA,  
14 EPIFANIO BARRAGAN ESTRADA,  
15 ROBERT BLANCHARD, and  
HERMINIO BARRAGAN MENDOZA

16 Defendants.

CASE NO. CR08-5125BHS

ORDER DENYING MOTION  
TO DISMISS COUNT 13

17 This matter comes before the Court on Defendant Amador Heredia-Mendoza's  
18 Motion to Dismiss Count 13 Under *District of Columbia v. Heller*. Dkt. 459. Defendants  
19 Epifanio Barragan Estrada, Robert Blanchard, and Herminio Barragan Mendoza joined  
20 this motion. Dkts. 336, 493, and 498.

21 **I. BACKGROUND**

22 The Government alleges that Defendant Amador Heredia-Mendoza ("Heredia") is  
23 the leader of a drug trafficking cell operating in Thurston County, Washington.  
24 Government agents conducted a wiretap investigation during 2008 and intercepted phone  
25 calls on Mr. Heredia's cell phone ("target phone 9"), and learned that Mr. Heredia was  
26 allegedly storing methamphetamine at his apartment in Lacey. Agents conducted a search  
27 of Mr. Heredia's apartment on April 2, 2008, and seized a handgun with a loaded  
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1 magazine and one round in the chamber. The agents also found a marijuana smoking  
2 device, as well as target phone 9 at the apartment.

3 Defendants Epifanio Barragan Estrada, Robert Blanchard, and Herminio Barragan  
4 Mendoza did not provide any factual background that relate to their joinders to Mr.  
5 Heredia's motion.

6 Count 13 of the Government's third superceding indictment charges Defendant  
7 Amador Heredia-Mendoza with possession of a firearm in furtherance of a drug  
8 trafficking crime in violation of 18 U.S.C. § 924(c)(1)(A). Dkt. 408. The other defendants  
9 who joined this motion have been charged with the same crime. *See* Dkt. 408 (count 7  
10 charging Herminio Barragan Mendoza, count 12 charging Epifanio Barragan Estrada, and  
11 count 16 charging Robert Blanchard).

## 12 **II.DEFENDANTS' MOTION TO DISMISS**

13 Defendants move the Court to dismiss these counts on grounds that the applicable  
14 statute, 18 U.S.C. § 924(c)(1)(A), is unconstitutional on its face or as applied based on the  
15 Supreme Court's recent ruling in *District of Columbia v. Heller*, 128 S.Ct. 2783 (2008).  
16 Defendants contend that the statute is unconstitutional because it purports to criminalize  
17 possession of a gun in the home on the basis of "mere thought – intent to use the gun to  
18 'facilitate' a drug crime." Dkt. 459-2 at 4. Mr. Heredia also challenges the  
19 constitutionality of the statute on the basis that Government agents seized the weapon at  
20 his residence, and maintains that "the firearm could have been in the residence prior to the  
21 alleged participation in the conspiracy [relating to drug trafficking] for the purpose of  
22 defending the resident of the apartment [or] the firearm may have been present for the  
23 dual purposes of both defending the resident of the apartment as well as facilitating a drug  
24 trafficking crime." Dkt. 479 at 2.

25 Title 18, U.S.C. § 624(c)(1)(A), mandates certain sentences for "any person who,  
26 during and in relation to any crime of violence or drug trafficking . . . uses or carries a  
27 firearm, or who, in furtherance of any such crime, possesses such firearm."  
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1 In *Heller*, the Supreme Court held that the District of Columbia's ban on handgun  
2 possession in the home violated the Second Amendment. *Heller*, 128 S. Ct. at 2821-22.  
3 The Court recognized that the right secured by the Second Amendment is "not  
4 unlimited." *Id.* at 2816.

5 The Court denies Defendants' motion and concludes that Title 18, U.S.C. §  
6 624(c)(1)(A), is not unconstitutional based on the holding in *Heller*. Pursuant to this  
7 statute, the Government must prove at trial that the firearm was possessed in *furtherance*  
8 of a drug trafficking crime, not merely that the defendants possessed a firearm. *Heller* did  
9 not hold that individuals have a constitutional right to possess a firearm under any and all  
10 circumstances, including those that are unlawful. *See, e.g., Heller*, 128 S. Ct. at 2799 (the  
11 Second Amendment does not "protect the rights of citizens to carry arms for any sort of  
12 confrontation").


13 Defendants' argument that a statute may not prohibit possession of a firearm used  
14 in furtherance of a crime when a defendant also has a "dual purpose" of self-protection is  
15 unsupported by legal precedent and is unavailing.

### 16 **III. ORDER**

17 Therefore, it is hereby **ORDERED** that

18 Defendants' motion to dismiss (Dkt. 459) is **DENIED**.

19 DATED this 18<sup>th</sup> day of November, 2008.

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BENJAMIN H. SETTLE  
United States District Judge